



Ashland

WISCONSIN

DEPARTMENT OF
PLANNING &
DEVELOPMENT

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ET-18325

Paul LaDue
Canadian National
Region Director Contracts and Administration
17641 South Ashland Avenue
Homewood, IL 60430-1345

August 31, 2010

Dear Paul LaDue:

I am writing in response to your letter dated August 23, 2010 to Mayor Bill Whalen related to the issuance of the Demolition Permit for phases I and II of the Soo Line Ore Dock demolition on July 26, 2010 by the City of Ashland.

The Demolition Permit that was issued on July 16, 2010, was issued with the support of the City's Mayor, legal counsel and staff. Unfortunately, and contrary to statements in your August 23, 2010 letter, this was not the case with the April 2010 permit draft that was negotiated between Canadian National (CN) and the City's former Mayor.

As identified to Wisconsin Central, Ltd. (WCL) by the City of Ashland in 2000, the Ore Dock presents safety hazards to the general public in Ashland. These hazards remain a concern to the City, and as you've previously stated, to WCL / CN. We understand that the more time that is spent discussing permits, the more the project is delayed and costs increases are incurred by WCL. It is therefore important to both our organizations that action be taken to immediately address these issues.

For these reasons, the City of Ashland has issued the Demolition Permit despite the several items that are pointed out in your August 23rd letter, which the City of Ashland and WCL have not come to agreement on.

After revisiting these issues again, the City of Ashland remains committed to the terms of the Demolition Permit. Reasoning on these items follows.

- (I) **Water Quality and Testing Process.** We understand that CN would like to include drinking water standards as included in State Administrative Code NR 809, however we chose not to include these in the permit because the City is concerned about the entire municipal water system, not only these drinking water standards.
- (II) **Insurance and Indemnification Requirements.**
 - (a) **FELA Insurance Coverage.** The permit issued by the City does require WCL to maintain a Worker's Compensation Insurance policy throughout the length of the project to cover liabilities that arise under the Federal Employer's Liability Act (FELA).

If WCL has the insurance necessary to cover employees under FELA, why is this an issue? By including this requirement, the City further ensures that employees on this project are covered by WCL so that the City is not responsible for any claims that may arise. Additionally, this insurance coverage requirement is the same that CN requires of the City of Ashland, when the City requests an easement or right-of-entry agreement from CN.

- (b) **\$10 Million Contractual Liability Insurance.** The City of Ashland is requiring this coverage for the term of this project to cover indemnity associated with the demolition activities.

As you have mentioned WCL / CN has required its two contractors, Veit and Mavo Systems, to carry Commercial General Liability insurance throughout the term of this project. The City is requiring that WCL also carry liability insurance to cover any issues that may arise which are not directly related to Veit or Mavo System's scope of work.

This spring, we had an incident that demonstrated the need to have WCL as the insurance carrier. Either WCL or CN hired a firm to install measures that would keep the peregrine falcons from nesting on the Ore Dock. Against City ordinances and warnings from City staff, a lift was delivered to and picked-up from the Ore Dock on a semi-tractor/trailer that exceeded allowable weight limits. In this circumstance Veit and Mavo Systems were not involved. As the owner of the Ore Dock, the City is requiring WCL to be ultimately liable for this demolition project.

The liability insurance requirement is similar to what CN requires of the City of Ashland, when the City requests an easement or right-of-entry agreement from CN. CN requires liability insurance from the City in an aggregate limit of \$10 million per annual policy period.

- (c) **Indemnification.** It is understood that CN agrees to indemnify the City, but not "trespassers and non-parties to the Demolition Permit".

This demolition project is an extraordinary project in scale and impact on the community and public infrastructure. As such, the City of Ashland is obligated to protect the public health, safety, and welfare of all citizens. The City will not waiver on its responsibility to uphold these protections.

Further, the City is requiring this indemnification because as we've recently learned, there is a gap in State Statutes pertaining to trespassing. The recent incident with the Ore Dock trespasser who fell into a chute and required emergency extraction (which was funded by the City) informed us that the District Attorney's office could not prosecute the offense because such a scenario is not cover by the State's trespassing laws.

The indemnification that is included in the City's Demolition Permit is similar to what CN requires of the City of Ashland, when the City requests an easement or right-of-entry agreement from CN. CN requires that the City indemnify CN from all claims from any and all persons, including but not limited to City of Ashland employees or agents, regardless of negligence on the part of the railroad.

- (III) **Wear and Tear on City Streets.** CN contends that the City is imposing unfair conditions pertaining to designated City haul routes. Conditions that have been included in the permit are the requirements to follow City ordinances pertaining to haul routes, as well as the requirement that damage to non-haul routes be remedied. These conditions have been imposed and will

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continue to be imposed uniformly throughout the city. We cannot give CN, WCL, or its contractors, special exception to these requirements.

We trust that CN understands the foregoing rationale for including these clauses in the Demolition Permit. The City does not wish to cause further delays to the start of the work. The City will continue to work in good faith with CN to complete the project in an expedited fashion, while protecting the health, safety, and welfare of the Ashland's citizens, public and private property.

In addition to the Demolition Permit, the City of Ashland also finalized and sent to you, on July 16th, 2010, a ROW License between the City of Ashland and Wisconsin Central, Ltd. (WCL) for:

- (i) the exclusive use of City owned rights-of-way, adjacent to the project site during the demolition project, and
- (ii) the use of City owned rights-of-way, which currently are not haul routes, for ingress and egress of the project site as haul routes for the project.

If WCL is not interested in utilizing this City owned property during the demolition work, no further action is needed by WCL. On the other hand, the License is signed by the City of Ashland, and will be executed upon the signature of an authorized WCL representative.

So long as you understand the City's inability to be flexible with the Demolition Permit conditions, we would be willing to meet with CN as well as the addressee agencies on the August 23, 2010 letter, to discuss WCL / CN's plan for commencement of the project.

As previously requested by the Mayor in his July 16, 2010 letter, please direct future correspondence to my attention.

Sincerely,



Brea Grace
Director of Planning & Development

cc:

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